

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

Joint Committee on
Finance (JC-Fi)

Sample:

Record of Comm. Proceedings ... RCP

- 05hrAC-EdR_RCP_pt01a
- 05hrAC-EdR_RCP_pt01b
- 05hrAC-EdR_RCP_pt02

➤ Appointments ... Appt

➤ **

➤ Clearinghouse Rules ... CRule

➤ **

➤ Committee Hearings ... CH

➤ **

➤ Committee Reports ... CR

➤ **

➤ Executive Sessions ... ES

➤ **

➤ Hearing Records ... HR

➤ **

➤ Miscellaneous ... Misc

➤ 97hrJC-Fi_Misc_pt95_LFB

➤ Record of Comm. Proceedings ... RCP

➤ **

Public Defender

(LFB Budget Summary Document: Page 456)

LFB Summary Items for Which Issue Papers Have Been Prepared

<u>Item #</u>	<u>Title</u>
2	Unspecified Budget Reductions (Paper #645)
4	Sexual Predator Caseload (Paper #646)
5	Sentencing Alternatives (Paper #647)

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

Unspecified Budget Reductions (Public Defender)

[LFB Summary: Page 456, #2]

CURRENT LAW

The State Public Defender has base GPR funding of \$55.9 million and 529.6 GPR positions for state operations.

GOVERNOR

Delete \$816,900 GPR in 1997-98 and \$987,600 GPR in 1998-99 from the Public Defender's trial representation appropriation to reflect budget reductions. Require the Public Defender to submit a report to the Governor and Joint Committee on Finance, by October 1, 1997, indicating the agency's proposal for allocating the reductions among the agency's sum certain, general purpose revenue appropriations.

DISCUSSION POINTS

1. According to the "Budget in Brief" document, the Governor recommends permanent reductions of approximately 2% per year of GPR state operations funding for some state agencies, the Courts and the Legislature. For the Public Defender, DOA officials indicate that they took into account specific reductions under the bill in the calculation of the required reductions. The unspecified reductions represent a cut of 1.46% in 1997-98 and 1.77% in 1998-99 from the agency's GPR base for state operations.

2. Under the bill, the Public Defender would be required to submit a report to the Governor and Joint Committee on Finance concerning the agency's proposal for allocating the unspecified reductions. On similar provisions relating to the Arts Board and Historical Society, the Committee voted to require that the report be subject to the approval of the Joint Finance Committee under a 14-day passive review process. To be consistent with the treatment of those agencies, the bill could be modified to include a 14-day passive review of the Public Defender's proposal to allocate the unspecified funding reductions. The modification would permit the recommended GPR reductions to be implemented, if the Committee approves the proposal or does not schedule a meeting to review it within 14 working days after its receipt.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to delete \$816,900 GPR in 1997-98 and \$987,600 GPR in 1998-99 from the Public Defender's trial representation appropriation. In addition, require the Public Defender to submit a report to the Governor and the Joint Committee on Finance, by October 1, 1997, indicating the agency's preference for allocating the reductions among the agency's sum certain, general purpose revenue appropriations.

2. Approve the Governor's recommendations, with a modification to specify that the Public Defender's proposed allocation of the unspecified reductions submitted to the Joint Committee on Finance would be subject to approval under a 14-day passive review process.

Prepared by: Carri Jakel

MO# Alt #2

JENSEN	<input checked="" type="checkbox"/>	N	A
LEHMAN, M.	<input checked="" type="checkbox"/>	N	A
HARSDORF	<input checked="" type="checkbox"/>	N	A
ALBERS	<input checked="" type="checkbox"/>	N	A
GARD	<input checked="" type="checkbox"/>	N	A
KAUFERT	<input checked="" type="checkbox"/>	N	A
LINTON	<input checked="" type="checkbox"/>	N	A
COGGS	<input checked="" type="checkbox"/>	N	A

1/BURKE	<input checked="" type="checkbox"/>	N	A
2/DECKER	<input checked="" type="checkbox"/>	N	A
GEORGE	<input checked="" type="checkbox"/>	N	A
JAUCH	<input checked="" type="checkbox"/>	N	A
WINEKE	<input checked="" type="checkbox"/>	N	A
SHIBILSKI	<input checked="" type="checkbox"/>	N	A
COWLES	<input checked="" type="checkbox"/>	N	A
PANZER	<input checked="" type="checkbox"/>	N	A

AYE 16 NO 0 ABS

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

Sexual Predator Caseload (Public Defender)

[LFB Summary: Page 457, #4]

CURRENT LAW

1993 Wisconsin Act 479 (the sexual predator law) created Chapter 980, which provides for involuntary civil commitment of sexually violent persons to secure mental facilities prior to their release from custody of the Department of Corrections (DOC) or the Department of Health and Family Services (DHFS). A "sexually violent person" is defined as someone who has been: (1) convicted of a sexually violent offense; (2) adjudicated delinquent for a sexually violent offense; or (3) found not guilty of, or not responsible for, a sexually violent offense by reason of insanity or mental disease, defect or illness. Sexually violent offenses include first or second degree sexual assault, first or second degree sexual assault of a child, engaging in repeated acts of sexual assault of the same child, incest with a child or child enticement. Chapter 980 became effective on June 2, 1994.

If a person subject to a petition filed under Chapter 980 is indigent, he or she is entitled to representation by the State Public Defender.

Caseload levels for Public Defender staff attorneys are statutorily set for budget purposes. Currently, each attorney must annually handle the equivalent of 15 first degree homicide cases, 184.5 felony cases, 492 misdemeanor cases or 246 other cases. Sexual predator cases are currently counted as felony cases for the purposes of staff caseloads.

GOVERNOR

Provide \$284,700 GPR in 1997-98 and \$502,300 GPR in 1998-99 for: (a) increased costs associated with creating a special statutory caseload standard of 15 cases per year for staff attorneys for sexual predator cases (\$123,700 in 1997-98 and \$341,300 in 1998-99); and (b) expert witness costs associated with those cases (\$161,000 annually). The caseload standard, which would be the same as the standard for first degree homicide cases, would be in effect through June 30, 1999. In addition, require the Public Defender to submit a report to the Legislature by October 1, 1998, specifying and evaluating the time spent by Public Defender attorneys in representing sexual predator cases.

DISCUSSION POINTS

1. According to the Public Defender, because of the complex nature of Chapter 980 commitment cases, they typically require as much, or more, time as required for first degree homicide cases. To date, Chapter 980 cases that have been handled by the Public Defender have involved between 144 attorney hours and 291.5 attorney hours, while homicide cases average 108 attorney hours.

2. Staff in the Public Defender's office indicate that attorneys are becoming less willing to take sexual predator cases without being properly credited for the amount of time actually being spent defending these cases.

3. Under the bill, it is assumed that the Public Defender would handle 92 sexual predator cases, with one-half being defended by staff attorneys and one-half assigned to the private bar. However, based on current caseload, it is now estimated that 70 new sexual predator petitions will be filed each year.

4. Given that the persons subject to Chapter 980 are in custody of either DOC or DHFS, it is assumed that all would be eligible for representation by the Public Defender. Assuming staff attorneys handle one-half of the cases, it is estimated that 35 cases would be handled by Public Defender staff attorneys and 35 would be assigned to private bar attorneys.

5. As a result of the revised caseload estimates, private bar costs under the bill can be reduced by \$140,600 in 1997-98 and \$252,700 in 1998-99.

6. If the new caseload standard is not adopted, additional private bar funding would be needed. However, because of the caseload reestimates, total funding needed would be less than under the bill (-\$128,400 in 1997-98 and -\$217,600 in 1998-99).

7. Public Defender officials indicate that the special caseload standard for sexual predator cases is needed so that staff attorneys would continue to handle a portion of these cases.

The Public Defender is responsible for overseeing private bar attorneys handling Public Defender cases. Therefore, Public Defender officials believe it is important for staff attorneys to handle some of these cases so that they can provide proper oversight to private attorneys handling Chapter 980 cases.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to: (a) provide \$284,700 GPR in 1997-98 and \$502,300 GPR in 1998-99 for increased costs associated with creating a special statutory caseload standard, in effect through June 30, 1999, for staff attorneys for sexual predator cases and for expert witness costs associated with those cases; and (b) require the Public Defender to submit a report to the Legislature by October 1, 1998, specifying and evaluating the time spent by the State Public Defender in representing sexual predator cases. Funding under the bill assumes 92 total sexual predator cases handled by the Public Defender annually.

2. Modify the Governor's recommendation by deleting \$140,600 GPR in 1997-98 and \$252,700 GPR in 1998-99 to reestimate the number of sexual predator cases during the 1997-99 biennium.

<u>Alternative 2</u>	<u>GPR</u>
1997-99 FUNDING (Change to Bill)	- \$393,300

3. Do not create a sexual predator caseload standard, and delete \$128,400 GPR in 1997-98 and \$217,600 GPR in 1998-99 to maintain current law. Under this alternative, it is estimated that 70 sexual predator cases a year would be assigned to private bar attorneys, and the requirement for the Public Defender to submit a report to the Legislature would be deleted.

<u>Alternative 3</u>	<u>GPR</u>
1997-99 FUNDING (Change to Bill)	- \$346,000

Prepared by: Carri Jakel

MO# AH#2

JENSEN	Y	N	A
LEHMAN, M.	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON	Y	N	A
COGGS	Y	N	A

BURKE	Y	N	A
DECKER	Y	N	A
GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A

AYE 16 NO 0 ABS 0

To: Joint Committee on Finance

From: Bob Lang, Director
Legislative Fiscal Bureau

ISSUE

Sentencing Alternatives (Public Defender)

[LFB Summary: Page 458, #5]

CURRENT LAW

Property crimes involving: (a) theft; (b) retail theft; (c) theft of library materials; (d) receiving stolen property; (e) fraudulent use of financial transaction cards; (f) issue of worthless checks; (g) graffiti; (h) fraud on a hotel or restaurant keeper or taxicab driver; (i) intentional damage to a machine operated by cash, debit card or credit card; or (j) intentional damage to property are subject to different penalties depending on the value of harm done. Under current law, if the theft or damage does not exceed \$1,000, it is considered a class A misdemeanor (punishable by up to nine months in jail). Crimes which involve values exceeding \$1,000 are felonies (punishable by up to two or more years in prison). In addition, under current law, a person who makes a fraudulent insurance or employee benefit claim is subject to a felony, if the value of the claim or benefit exceeds \$1,000. Further, under current law, certain forgeries are subject to class C felony penalties. Lastly, vehicles which are used to cause more than \$1,000 in damage to cemetery property are subject to seizure and forfeiture.

The average private bar cost for a felony case is \$875 compared to \$325 for a misdemeanor case.

GOVERNOR

Delete \$184,700 GPR in 1997-98 and \$672,800 GPR in 1998-99 from the private bar appropriation to reflect attorney cost savings as a result of reducing penalties for certain crimes. The new penalties would be effective for offenses committed on or after August 1, 1997, or on

the day after publication of the bill, whichever is later. The bill would increase from \$1,000 to \$1,500 the threshold for determining whether misdemeanor or felony penalties would apply for the property crimes listed above. In addition, for offenses involving fraudulent insurance or employee benefit claims, the bill would increase the value of a misdemeanor fraudulent claim offense to \$1,500. The bill would also reduce the penalty for forgery crimes involving a purported value of less than \$1,500 from a class C felony to a misdemeanor. Further, under the bill, the value of damage to cemetery property at which a vehicle used in a crime may be forfeited would be increased to \$1,500.

DISCUSSION POINTS

1. The total number of property crimes cases handled by the Public Defender that may be affected under the bill is estimated at 1,200 annually. Based on a month-long survey of cases, the Public Defender estimates that approximately 20% of these property crimes involve damages valuing between \$1,000 and \$1,500 and, under the bill, would be subject to misdemeanor instead of felony penalties. The savings to the Public Defender would be estimated at \$35,600 in 1997-98 and \$129,500 in 1998-99.

2. The distinction between a misdemeanor and a felony crime, for the property crimes that would be affected under the bill, was last modified in the 1991-93 biennial budget when the Governor recommended, and the Legislature adopted, an increase of the misdemeanor threshold from \$500 to \$1,000.

3. Currently, certain forgery cases are subject to class C felony penalties regardless of the monetary value involved in the criminal activity. These include: (a) falsely making or altering, with intent to defraud, a written instrument to create, terminate or transfer legal rights or obligations, or to represent as evidence of debt or property rights; or (b) uttering or intending to utter as genuine any forged writing or object. Under the bill, if the purported value of the object being forged in these types of cases involves less than \$1,500, the crime would be reduced from a felony to a class A misdemeanor.

4. The Public Defender handles 1,500 forgery cases each year, of which they estimate 67% involve values of less than \$1,500. Therefore, if these crimes were reduced to misdemeanors, savings to the Public Defender would be \$149,100 in 1997-98 and \$543,300 in 1998-99.

5. The Public Defender indicates that many of the forgery cases that they handle involve unauthorized writing, altering or signing checks with values of less than \$1,500. It would seem reasonable that the penalties for these types of forgery cases be consistent with penalties for similar property crimes, such as issuing worthless checks and fraudulent financial card transactions.

6. However, some have voiced concern over lessening the penalties for crimes involving forgeries, particularly businesses that deal with frequent cash transactions, often in the form of checks. Therefore, the Committee may wish to keep the more strict penalties for these forgery crimes.

7. Alternatively, if the Committee does not approve the Governor's recommendation for increasing the misdemeanor threshold in property crimes, the Committee could still consider reducing the crimes for forgeries involving values of less than \$1,000 to make these penalties consistent with similar property crimes. Under this alternative, \$58,000 GPR in 1997-98 and \$211,000 GPR in 1998-99 would need to be restored in the private bar appropriation.

8. According to DOA, the changes in penalties under the bill for a fraudulent insurance or employee benefit claim and for vehicles involved in damage to cemetery property were changed to be consistent with the changes in property and forgery crimes. However, the Public Defender indicates that last year there were only nine cases involving fraudulent insurance or employee benefit claims, and it cannot be determined how many, if any, would be affected under the bill. In addition, the provision regarding seizure and forfeiture of vehicles used to cause damage to cemetery property does not affect the Public Defender, because this affects the penalty given at the close of the case, rather than whether the crime is a misdemeanor or felony.

9. Additional savings could be realized if the misdemeanor threshold was increased further. The Committee could consider increasing the threshold for determining whether misdemeanor or felony penalties apply for certain crimes from \$1,500 to \$2,000. It is estimated that this change would result in an additional 31 property crimes and 131 forgery crimes that would be subject to misdemeanor penalties instead of felony penalties. As a result, savings to the bill could be increased by \$24,100 in 1997-98 and \$87,800 in 1998-99.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to delete \$184,700 GPR in 1997-98 and \$672,800 GPR in 1998-99 from the private bar appropriation to reflect savings from reducing penalties for certain crimes with values involving \$1,000 to \$1,500. Crimes affected would include: (a) theft; (b) retail theft; (c) theft of library materials; (d) receiving stolen property; (e) fraudulent use of financial transaction cards; (f) issue of worthless checks; (g) graffiti; (h) fraud on a hotel or restaurant keeper or taxicab driver; (i) intentional damage to a machine operated by cash, debit card or credit card; or (j) intentional damage to property. In addition, raise the threshold for misdemeanors involving fraudulent insurance or employee benefit claims from \$1,000 to \$1,500. Further, reduce to a class A misdemeanor, certain forgeries involving values of \$1,500, or less. Also, for cases involving vehicles causing damage to cemetery property, increase the value of property for which a vehicle used in a crime may be forfeited from \$1,000 to \$1,500.

2. Modify the Governor's proposal by increasing from \$1,000 to \$2,000 (instead of \$1,500, as provided under the bill) the threshold for determining whether misdemeanor or felony penalties apply for the crimes listed in alternative 1. Reduce the private bar appropriation by an additional \$24,100 GPR in 1997-98 and \$87,800 GPR in 1998-99.

<u>Alternative 2</u>	<u>GPR</u>
1997-99 FUNDING (Change to Bill)	- \$111,900

3. ^{FAIL} Eliminate the Governor's recommendations to reduce penalties for forgeries, and provide an additional \$149,100 GPR in 1997-98 and \$543,300 GPR in 1998-99 to the private bar appropriation.

<u>Alternative 3</u>	<u>GPR</u>
1997-99 FUNDING (Change to Bill)	\$692,400

4. ^{PASS} Eliminate the Governor's recommendations. Instead, reduce the penalty for forgeries involving less than \$1,000 from a class C felony to a class A misdemeanor. This would make penalties for forgery crimes consistent with the current levels which apply to property crimes. Provide additional funding of \$58,000 GPR in 1997-98 and \$211,000 GPR in 1998-99 to the private bar appropriation.

<u>Alternative 4</u>	<u>GPR</u>
1997-99 FUNDING (Change to Bill)	\$269,000

5. Maintain current law.

<u>Alternative 5</u>	<u>GPR</u>
1997-99 FUNDING (Change to Bill)	\$857,500

Prepared by: Carri Jakel

MO# Alt #4

JENSEN	Y	N	A
LEHMAN, M.	X	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON	X	N	A
COGGS	X	N	A

2 BURKE X N A
 DECKER X N A
 1 GEORGE X N A
 JAUCH X N A
 WINEKE X N A
 SHIBILSKI X N A
 COWLES X N A
 PANZER X N A

AYE 11 NO 5 ABS

MO# Alt #3

JENSEN	Y	N	A
LEHMAN, M.	Y	N	A
HARSDORF	Y	N	A
2 ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
LINTON	Y	N	A
COGGS	Y	N	A

BURKE	Y	N	A
DECKER	Y	N	A
GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A

AYE 8 NO 8 ABS

PUBLIC DEFENDER

Motion:

Move to provide \$800,000 GPR in 1997-98 and \$1,600,000 GPR in 1998-99 to restore Public Defender representation to eligible parents whose children are involved in CHIPS cases.

Note:

[Change to Bill: \$2,400,000 GPR]

MO# 1640

JENSEN	Y	N	A
LEHMAN, M.	Y	N	A
HARSDORF	Y	N	A
ALBERS	Y	N	A
GARD	Y	N	A
KAUFERT	Y	N	A
2 LINTON	Y	N	A
COGGS	Y	N	A

BURKE	Y	N	A
DECKER	Y	N	A
GEORGE	Y	N	A
JAUCH	Y	N	A
WINEKE	Y	N	A
SHIBILSKI	Y	N	A
COWLES	Y	N	A
PANZER	Y	N	A

AYE 6 NO 10 ABS _____

PUBLIC DEFENDER

LFB Summary Items for Which No Issue Papers Have Been Prepared

<u>Item #</u>	<u>Title</u>
1	Standard Budget Adjustments
3	Private Bar - Cost to Continue
6	Paralegal Demonstration Project
7	Trial Attorneys
8	Transfer of Attorney Positions

LFB Summary Item to be Addressed in a Subsequent Paper

<u>Item #</u>	<u>Title</u>
9	Information Technology Support Position

LFB Summary Item for Introduction as Separate Legislation

<u>Item #</u>	<u>Title</u>
10	Release of Certain Confidential Records for Child Support Enforcement and Public Assistance Administration